

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DON GIBSON, LAUREN CRISS, JOHN MEINERS, and DANIEL UMPA, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, *et al.*,

Defendants.

Civil Action No. 4:23-cv-00788-SRB

[Consolidated with 4:23-cv-00945-SRB]

JURY TRIAL DEMANDED

PLAINTIFFS' MOTION AND SUGGESTIONS IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENTS WITH DEFENDANTS REAL ESTATE ONE AND BAIRD & WARNER; CERTIFICATION OF SETTLEMENT CLASSES; AND APPOINTMENT OF CLASS REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL

On November 4, 2024, the Court granted final approval of Settlements in this case with nine Defendants—Compass, Real Brokerage, RealtyOne, @properties, Douglas Elliman, Redfin, Engel & Volkers, HomeSmart, and United Real Estate. (Doc. 530) The following day, the Court granted preliminary approval of Settlements with four other Defendants—NextHome, Keyes, John L. Scott, and LoKation. After several months of negotiations, Plaintiffs have now reached Settlements with two additional *Gibson* Defendants:

- Real Estate One, Inc. (“Real Estate One”); and
- Baird & Warner Real Estate, Inc. (“Baird & Warner”) (collectively the “Settling Defendants”).¹

¹ The Settlement Agreements are attached as Exhibits A and B to the Declaration of Steve W. Berman, Ex. 1 (“Berman Decl.”).

The Settlements with Real Estate One and Baird & Warner are substantially similar to those reached with the thirteen previous *Gibson* Settling Defendants, as well as those reached with *Burnett* settling Defendants Anywhere, RE/MAX, Keller Williams, and HomeServices. The Real Estate One and Baird & Warner Settlements were the result of lengthy arms-length negotiations and consideration of the risk and cost of litigation. *See* Berman Decl. at ¶¶ 8, 12, 15. As with the previous *Gibson* Settlements, these Settlements were reached after a detailed investigation of each Defendant's financial condition and ability to pay a judgment or settlement. *See id.* at ¶ 13. The Settlements are fair, reasonable, and adequate, and beneficial to the Settlement Classes. *See id.* at ¶¶ 11-13. Class counsel have discussed the Settlements with the Gibson Class Representatives, and they have approved them. *See id.* at ¶ 16.

Settlement Class:

1. The proposed Settlement with **Baird & Warner** encompasses the same Settlement Class that the Court certified (or preliminarily certified) for settlement of claims against Compass, Douglas Elliman, HomeSmart, Real Brokerage, Realty ONE, United Real Estate, NextHome, and LoKation, as follows:
 - a. All persons who sold a home that was listed on a multiple listing service² anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date range:
 - i. October 31, 2019 to date of Class Notice.

(*See* Baird & Warner Settlement Agreement at ¶ 15.)

² MLS includes non-NAR multiple listing services, including RENY / RLS, as well as multiple listing services owned, operated, or governed by, or associated with the Florida Association of Realtors (or its regional and local associations).

2. The proposed Settlement with **Real Estate One** encompasses the same Settlement Class that the Court certified (or preliminarily certified) for settlement of claims against Engel & Völkers, @properties, Keyes, and John L. Scott, as follows:

- a. All persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home in the following date ranges:
 - i. Homes in Arkansas, Kentucky, and Missouri: October 31, 2018 to date of Class Notice;
 - ii. Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming: October 31, 2017 to date of Class Notice;
 - iii. For all other homes: October 31, 2019 to date of Class Notice.

(See Real Estate One Settlement Agreement at ¶ 15.)

The Settlement Agreements provide for a nationwide settlement class with a nationwide settlement and release. (See Real Estate One and Baird & Warner Settlement Agreements at ¶ 15.)

Settlement Amount:

The two recent Settlements provide that the Settling Defendants will pay a total of \$3.7 million for the benefit of the Settlement Class, as follows:

- Real Estate One: \$1.5 million
- Baird & Warner: \$2.2 million

(See Settlement Agreements at ¶ 18.) Together with other Settlements in this action and the *Burnett* action, Plaintiffs have recovered over \$1 billion for the benefit of the Settlement Class. (See, e.g., Doc. 521 at 1.) The non-monetary terms of these two Settlements are substantially the same in all material respects as the terms of the previous thirteen *Gibson* Settlements, including substantially

similar Practice Changes or agreements to maintain certain practices (*See* Settlement Agreements at ¶¶ 49-51), Cooperation (*id.* at ¶¶ 52-55), and Release provisions (*id.* at ¶¶ 28-30).

Because the Settlements provide substantially similar relief as the Settlements the Court has already approved in *Burnett* (*Burnett* Doc. 1487), as well as the Settlements that the Court has approved in this action (*Gibson* Docs. 530 and 534), the Court should grant preliminary approval of the Real Estate One and Baird & Warner Settlements. In support, Plaintiffs incorporate herein their previous motions for preliminary and final approval (Docs. 161, 294, and 521).

Plaintiffs may reach additional settlements with other Defendants in this case. To promote efficient use of settlement funds and class notice resources, and to avoid confusion to Class Members, Plaintiffs propose combining the dissemination of Class Notice of these and other settlements in this case. *See* Berman Decl. ¶ 22. Plaintiffs further propose to file, at a later date, a separate motion for approval of the form and manner of Class notice that satisfies the requirements of due process and also takes into account the settlement notice that has already been provided in this case and in *Burnett*.

Real Estate One and Baird & Warner do not oppose this motion.

Wherefore, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlements with Real Estate One and Baird & Warner; (2) certifying the Settlement Class as defined above for settlement purposes only; (3) appointing *Gibson* Plaintiffs as Settlement Class Representatives;³ (4) appointing Settlement Class Counsel;⁴ (5) appointing JND as the notice

³ *Gibson* Plaintiffs and proposed Settlement Class Representatives, are Don Gibson, Lauren Criss, John Meiners, and Daniel Umpa.

⁴ Proposed Settlement Class Counsel are Ketchmark & McCreight P.C., Boulware Law LLC, Williams Dirks Dameron LLC, Hagens Berman Sobol Shapiro LLP, Cohen Milstein Sellers & Toll PLLC, and Susman Godfrey LLP. (*See, e.g.*, Doc. 530 at ¶ 88 and Doc. 534 at ¶ 8.)

administrator; and (6) directing Plaintiffs to file, at a later date, a motion seeking approval of the form and manner of class notice.

Dated: January 27, 2025

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